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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re ANDREW C., a Person Coming
Under the Juvenile Court Law.

B219048

(Los Angeles County
Super. Ct. No. CK68999)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

C. M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Marguerite Downing, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Los Angeles County Counsel, James M. Owens, Assistant County Counsel, and Kim Nemoy, Deputy County Counsel, for Plaintiff and Respondent.

Mother C. M. appeals from an order terminating parental rights over her son Andrew. Finding no error, we affirm the juvenile court's order.

FACTUAL AND PROCEDURAL SUMMARY

Andrew was born In June 2007. Four days later the Los Angeles County Department of Children and Family Services (DCFS) received a referral alleging that father Andrew C., Sr., was selling drugs from a home where he lived with Andrew, mother, and Andrew's paternal grandparents. An investigation by DCFS revealed that mother was arrested in November 2006 for being under the influence of methamphetamine. At that time, she was pregnant with Andrew. At DCFS's request, mother agreed to submit to a drug test, but did not appear for the test. Mother did not participate in a scheduled meeting with DCFS and Andrew's paternal grandparents where the paternal grandparents voiced concerns about father's history of domestic violence and both parents' substance abuse problems. Following the meeting, mother again failed to appear for a drug test.

In July 2007, DCFS filed a petition pursuant to Welfare and Institutions Code section 300¹ to have Andrew detained. The petition, as amended and sustained, alleged that mother had a history of substance abuse which was not resolved through voluntary services provided by DCFS. The juvenile court ordered drug testing and monitored visitation for mother. Andrew was detained from both his parents and placed with his paternal grandparents; mother had since moved out of that home. The juvenile court ordered family reunification services, but DCFS had difficulty contacting mother. In September 2007, mother enrolled in a drug rehabilitation program and tested negative for drugs, but missed two drug tests and did not appear at rehabilitation sessions. She did not appear at two hearings before the juvenile court in September and November, 2007.

¹ All unspecified statutory references are to the Welfare and Institutions Code.

During the following year, Andrew was healthy and grew normally in the care of his paternal grandparents. Mother was incarcerated from February 2008 through April 2008. During her incarceration she completed a two-month drug and alcohol treatment program. Upon her release, mother enrolled in an outpatient drug treatment and testing program but left it in June 2008.

After her incarceration, mother visited Andrew two to three times per month, and later several times a week. DCFS had little or no contact with mother between May 2008 and March 2009. Mother did not keep DCFS informed of her participation in any drug treatment programs, nor any interest in reunifying with Andrew. DCFS recommended that the juvenile court terminate reunification services. In March 2009, the court terminated reunification services and set a section 366.26 hearing to identify a permanent plan for Andrew.

The 366.26 hearing was held in August 2009. The juvenile court concluded that returning Andrew to his parents would be to his detriment, and found that any bond between Andrew and his parents was no greater than the bond between Andrew and his paternal grandparents. The juvenile court terminated parental rights and freed Andrew for adoption. Mother timely appeals.

DISCUSSION

Mother argues the section 366.26, subdivision (c)(1)(B)(i) parental bond exception to termination of parental rights applies. We disagree.

Section 366.26 requires a juvenile court to select and implement one of four possible permanent plans for a dependent child; the permanent plan preferred by the legislature is adoption. (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732.) But a juvenile court is authorized to apply the parental bond exception to avoid the termination of parental rights when it finds “a compelling reason . . . that termination would be detrimental to the child . . . [¶] . . . [because t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the

relationship.” (§ 366.26, subd. (c)(1)(B).) Mother bore the burden of showing both that she maintained regular visitation and contact with Andrew, and that he would benefit from continuing a relationship with her. (*In re Zeth S.* (2003) 31 Cal.4th 396, 412, fn. 9.) The juvenile court in this case found: “it would be detrimental to return this child to his parents. The court finds there is no exception to adoption that applies in this case. The court notes this child has been out of the home and with his grandparents for almost his entire life. . . . [H]is parents visit, mother comes by and bathes him and does things. However, there is no information the bond between the parent and the child is greater than the bond between the grandparents and the child who actually provide all the things that parents do.” We review the juvenile court’s ruling for substantial evidence. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.) If upon review of the entire record, substantial evidence supports the finding, it must be upheld—even if substantial evidence to the contrary also exists. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

Mother had no visitation with Andrew when she was incarcerated in 2008. After her release in 2008, she visited Andrew several times a month, and as of July 2009, mother had been visiting him several times a week.² We shall assume for the purposes of this decision that the visitation requirement of the statutory exception was met, and look to whether mother showed that Andrew would benefit from continuing the mother-child relationship.

In determining whether the second prong to the parental relationship exception applies, “the court balances the strength and quality of the parent-child relationship in a tenuous placement against the security and sense of belonging that a stable family would confer on the child. If severing the existing parental relationship would deprive the child of ‘a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.’” (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1234-1235, quoting *In re*

² We note that it is difficult to determine with precision mother’s visitation because of her lack of communication with DCFS.

Autumn H. (1994) 27 Cal.App.4th 567, 575.) To show there is a substantial, positive, emotional attachment, there must be more than pleasant, “frequent and loving contact.” (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418.) “Interaction between natural parent and child will always confer some incidental benefit to the child. [However, t]he significant attachment from child to parent results from the adult’s attention to the child’s needs for physical care, nourishment, comfort, affection and stimulation. [Citation.]” (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.) “A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent. [Citation.]” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466, italics omitted.) “It would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

“‘The factors to be considered when looking for whether a relationship is important and beneficial are: (1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of interaction between the parent and child, and (4) the child’s particular needs.’ [Citation.]” (*In re Jason J.* (2009) 175 Cal.App.4th 922, 937-938.) At 26 months old, Andrew was too young to understand that mother was his biological parent. He was in her care for less than three weeks before he was detained. The record shows that during visits, mother would bathe Andrew, play with him, and interact with him. But DCFS repeatedly reported that there was insufficient bonding between mother and Andrew during visitation.

Andrew’s needs were well met by his grandparents; for the vast majority of his young life they filled the role of parents, providing for his health and development. Andrew had significant bonding with his grandparents; DCFS reported that he had become “very attached to them.” During the 20 months reunification services were provided, mother did not complete a drug testing or rehabilitation program, except for a two-month program offered while she was incarcerated. She did not communicate with

DCFS about her compliance with the case plan or her interest in reunification with Andrew. Andrew was in a stable, nurturing environment with caregivers committed to adopting him. The strength and quality of his relationship with mother did not outweigh his interest in stability and permanent placement that adoption by paternal grandparents would provide. There was substantial evidence in the record supporting the juvenile court's determination.

DISPOSITION

The order is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

SUZUKAWA, J.